

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date **January 11, 2006** Time **9:30 to 12:02 PM** Place **Insurance Dept., Rm 3112**

Members

(Attendees = x)

Commission Members

x Chairman, Joyce W. Clark, *Washington* x Darwin L. Johnson, *Wasatch*
x David M. Lattin, *Salt Lake* x Glen W. Roberts, *Utah* x R. Curt Webb, *Cache*

Department Staff

John E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	x Perri Babalis <i>AG Legal Counsel</i>	Brad Tibbitts <i>Director, P&C</i>	x Gerri Jones <i>MC Examiner</i>
x Sheila Curtis <i>MC Examiner</i>	Gale Lemmon <i>AG Prosecutor</i>	x Jilene Whitby <i>PIO/Recorder</i>	

Visitors

Roger Sutherland Justin Sutherland

Minutes

Welcome and Introductions – Chairman, Joyce Clark

At 9:35 a.m. Joyce welcomed everyone and introduced the visitors, Roger and Justin Sutherland.

Adoption of Minutes of Previous Meeting

Darwin made a **motion** to approve the minutes without change. David seconded the motion and the vote was unanimous in its favor.

Old Business

- **Review & Concur with Licensee Report**
Due to the transfer of the department's database to a new computer system, no licensing report was available.
- **Review & Concur with Enforcement Case Report**
There were no new enforcement actions since December's meeting.
- **Action Items from November Meeting:**
 - **Can Wrong or Old Questions be Pulled?** / Mickey Braun
Mickey reported that changes are made in the test database within a week of notification.
 - **Can Missed Questions be Reviewed After Taking a Test?** / Mickey Braun
The company is still researching this issue.
- **Collecting Money for Escrow and Other Losses** / Curt Webb
 - Perri said the statute does not address this issue. She noted that life and property and casualty lines of insurance have guarantee associations to deal with insurer defalcations. These associations have boards and insurers pay fees to the association to guaranty losses. The statute determines how assessments are paid.
 - Gerri referred to 31A-23a-204 that allows for 1% of the gross title premiums to be placed into a trust fund and Subsection 31A-2-206(7) lists the instruments funds can be placed in. The most immediate past ten years must be kept in a reserve trust account at all times. In the 11th year, the first year's contribution may be withdrawn, and so on. Interest may be used as it accrues. Funds can be used for claims throughout the life of the agency with the Commissioner's approval. Upon cessation of business the funds must stay in the account

for two years to pay any claims that may arise. These sections regulate agencies and not insurers.

- Perri said Section 31A-23a-407 makes insurers or underwriters liable for the actions of their producers. Curt said that 1% set aside by agencies in 31A-23a-204 is dedicated money reserved for the agency that contributed the money. The lien recovery fund referred to by Jon Bartlett and Paul Newton at the last meeting was to be administered and controlled by the state. Such a fund would have to be approved by the legislature and such funds are not popular with them.
- Perri asked why the consumer would be expected to pay into a fund to protect the lender?
- Curt said the Commission should give every idea a thorough hearing. All agreed.
- Perri did not think the amount charged insureds would cover title claims. No one was aware of underwriters pushing for this fund.
- **C.E. Application for ULTA Convention** / Joyce Clark
 - Joyce provided the Commission with a copy of the outline of the proposed panel discussion at the ULTA Convention. This will be submitted for C.E. accreditation.
 - Joyce asked Gerri to provide handouts of her power point presentation. Joyce will let her know how many copies she will need.
 - Joyce asked Curt to briefly review the discussion on the fiduciary rule.
 - The panel discussion will need to end by 10 a.m.
 - Joyce asked Darwin to talk about how the Commission will affect the title industry, i.e., legislation, rulemaking, and input from industry. Summarize Glen's letter. Glen suggested they comment on how well the commission and the department are working together and that the Commission has the power to write and pass rules.
 - They will set aside the last 20 minutes for questions and answers.
 - Joyce will emphasize that the Commission is willing to listen to input from the industry and all are welcome to attend Commission meetings.
- **ULTA Liaison with Commission** / Joyce Clark

Gerri said Brad felt that ULTA should liaison with the Commission, not the department. It was decided that Gerri would attend ULTA meetings as needed. Concern was expressed regarding the elimination of ULTA's liaison committee meeting and others and the fact that the Commission meeting can only be held formally. An informal atmosphere is needed to receive input and discussion from a wide cross section of the industry. Glen suggested that a member of the Commission attend the ULTA meetings. Joyce volunteered. The Commission will look into having informal meetings before or after their meetings.
- **Retention of Company Name after Buyout** / Joyce Clark

Joyce expressed concern that agencies are being purchased and the agency license retained solely to do escrow work. Sheila said that if the agency retains its federal number they could do this. Perri said the Insurance Department only regulates escrow in conjunction with title business, not escrow alone. Refer questions about this to Sheila. Gerri noted that as long as agents are appointed by an agency and the agency has a contract with an insurer it is okay.
- **Break** - 10:25 to 10:40 a.m.
- **Title Rules [R592-1](#) & [R592-2](#) Are Now in Effect** / Mickey Braun

These rules are on the web at <http://www.insurance.utah.gov/rules/index.htm>.
- **C.E. For Commission Members** / Mickey Braun

The department made a policy decision to allow Commission members C.E. credit for the time they work on rules and legislation. Certificates will be issued.
- **Update on Legislation** / Mickey Braun

Title legislation is in HB233, Producer Law Insurance Amendments, and will be sponsored by Representative Jim Dunnigan. The change will require producers to maintain C.E. records for seven years.

- **How long does it take to process renewals?** / Mickey Braun
Normally to receive a license it takes at least 15 days if done by mail and if done electronically it takes 48 hours. However, due to the move from one data system to another, Licensing has gotten behind.
- **Make Changes to Matrix for Rule R592-4** / Curt Webb
On the last line of the matrix the word "Settlement," should be deleted. Glen moved that they approve the matrix and start the formal rulemaking process. Curt seconded the motion and the vote was unanimously in its favor.
- **Results of Escrow Cost Analysis Survey?**
 - Curt thought the form could be misleading. A better indicator that charges are appropriate would be the number of sides (as in a split transaction) closed compared to the total annual income. Gerri said the Escrow Cost Analysis Survey is supposed to indicate if charges are appropriate for escrow services only. Escrow is required to stand-alone. It can't be subsidized by the title premium dollar. Glen suggested bringing this up at the convention and ask how this can be addressed.
 - Roger suggested that the decision on this be deferred until the fiduciary rule is dealt with. Curt said the gathering of evidence should continue.
 - Glen noted that they were ignoring the requirement in 31A-19a-209(3) that charges not be less than cost. Joyce said they were just postponing it. Glen said the statute should be reasonable and enforceable. This wording can't be taken out of the statute or charges turn into bribing or kickbacks, Curt warned. Joyce will bring the question up at the convention. Currently, most agencies are allowing title revenues to subsidize escrow costs. Glen suggested the statute say that an agency must be a viable operation, operating at a profit. Curt said most start up companies would not meet this requirement.
 - It was decided that the Commission work on the following rules and relating statutes to determine how to enforce them: the fiduciary rule, the annual report filing rule, the escrow rule and statutes relating to each.
 - Show attendees at the convention the title information on the website and provide a handout of it. Also provide a handout of the matrix and the cost analysis form. Ask them to complete and return the analysis form and to provide the Commission with their input on both. Names of counties, not individuals, should be included on the form when returned.
- **Article about the Commission** / Glen Roberts
Glen needed the exact language of the proposed legislative change to 31A-23a-204 for the article. The Commission reviewed the article and made suggestions. Joyce asked that all members participate on the Title Review Committee when they review test questions.

New Business

- **Simultaneous Second Mortgages On Refinance Transactions** / Gerri Jones
Gerri said that World Savings does not want to obtain a Lender's Policy on a junior lien on a concurrent first and second mortgage transaction, and shouldn't have to pay for one. On a buy sell, the Owner's Policy would cover the entire transaction. The premise is to tie the insurer to the transaction. You can't split a cash transaction. Gerri provided the Commission members with a handout of a conversation with World Savings regarding the purchase of a junior lien policy. The law on split closings needs to be changed. Curt said the new fiduciary rule would solve this issue. He said he had contacted Chris Kyler with Utah Association of Realtors, to talk with him about split closings. His initial reaction was positive.
- **CPL Issue Statutory or Regulatory?** / Perri Babalis
Glen made the motion that the Commission make the determination that the Commission not make a rule on this issue and if anyone wants to pursue it they would need to go through the legislature. Curt said, "We need to be straightforward with our decision on this issue." Perri suggested that the motion recommend that Insurance Department also go along with the Commission's motion. Curt amended the motion to state that, "We rule that we are not going to

address it through rule and if it is addressed by the legislature, the Commission along with the Insurance Department would not likely support it." Glen seconded the motion and the vote was unanimous in its favor.

Other Business from Committee Members

- NAIC Title Model Act - Put on April's agenda and send out for review prior to the meeting.
- The February Commission meeting will be held at Glen's office, Title West Company at 2577 E. Parleys Way, Fourth Floor conference room, 9:30 a.m.

Adjourned 12:02 p.m.

Next Meeting

9:30 a.m., Room 3112, State Office Building

January 11, 2006	July 12, 2006
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February 8, 2006	August 9, 2006
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March 8, 2006	September 13, 2006
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April 12, 2006	October 11, 2006
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May 10, 2006	November 8, 2006
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June 14, 2006	December 13, 2006
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